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VIA HAND DELIVERY

November 26, 2002

EX PARTE

RECEIVED

Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, S.W., Room TW-A325
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Re: Oral *Ex Parte* Presentation
CC Docket Nos. 02-33 and 01-337

Dear Ms. Dortch:

On November 25, 2002, Steven Teplitz, Vice President and Associate General Counsel, AOL Time Warner Inc. ("AOL"), Donna N. Lampert and the undersigned, both of Lampert and O'Connor, P.C., met with Commissioner Kathleen Q. Abemathy and Matthew Brill to discuss the above-referenced dockets.

In the meeting, consistent with AOL's Comments and Reply Comments filed on May 3, 2002 and July 1, 2002 respectively in CC Docket No. 02-33 and its Reply Comments filed April 22, 2002 in CC Docket No. 01-337, we discussed the following points.

We explained first that the *Computer Inquiry* rules are a valuable tool currently used by unaffiliated information service providers ("ISPs") to ensure that they can obtain wholesale DSL transmission services from the BOCs on the same rates, terms and conditions that the BOCs provide their affiliated ISPs. We explained that these rules, based on the principles of nondiscrimination and transparency, have been successful in fostering innovation, investment and competition in the information services market. We noted that this is not merely an issue of changing labels; there are hundreds of thousands of consumers and many ISPs that rely on the availability of wholesale DSL and that will be affected if they can no longer be assured that DSL services will be available on a transparent and nondiscriminatory basis. We strongly urged the Commission not to diminish inadvertently the underlying principles of the *Computer Inquiry* rules as it addresses regulatory classification issues.

Second, we stated that as a factual matter, even though there is competition for retail information services, there is still not competition for wholesale broadband transmission services.

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and the FCC itself has found that the BOCs offer over 95 percent of all DSL services. Based on the facts and the record before it, we urged the Commission not to classify the BOCs as nondominant, but to maintain the requirements that BOCs unbundle the underlying transmission component and make it available to unaffiliated ISPs on the same rates, terms and conditions that the BOC provides itself. We also emphasized that the Commission must ensure transparency in order to deter anticompetitive behavior and to enhance enforcement. This would be particularly important if services were to be detariffed.

Finally, we stated that clear precedent establishes that wholesale DSL transmission service is a telecommunications service, not telecommunications. We observed that Title I of the Communications Act raises significant legal risks, especially regarding the Commission's authority to enforce nondiscrimination principles. We discussed streamlining the current *Computer Inquiry* rules to reduce administrative burdens, yet retain nondiscrimination and transparency.

Pursuant to Section 1.1206(b)(2) of the Commission's rules, two copies of this letter and the attachment are being provided to you for inclusion in the public record in the above-captioned proceedings. Should you have any questions, please do not hesitate to contact me.

Sincerely,



Linda L. Kent

Counsel for AOL Time Warner Inc.

cc: Commissioner Abemathy
Matthew Brill